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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON

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13 UNITED STATES OF AMERICA,  
14 Plaintiff,  
15 v.  
16 NEHEMIAH W. FOWLKES,  
17 Defendant.

No. CR-08-0096-RHW

**ORDER GRANTING MOTION  
FOR REDUCTION IN SENTENCE  
UNDER SECTION 3582(c)(2)**

18 Defendant moves the Court to reduce his sentence based on an amendment to  
19 the Sentencing Guidelines. The matter was stayed until November 1, 2011, when  
20 Amendment 750 to the United States Sentencing Guidelines became retroactive. The  
21 matter is now ripe for review, and the Court grants Defendant's motion.

22 **Original Sentence**

23 On September 12, 2008, Defendant plead guilty to two counts of distributing  
24 five or more grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) &  
25 (b)(1)(B)(iii). Because the offense involved 82 net grams of cocaine base, as stipulated  
26 in the plea agreement, it resulted in a base offense level of 30. After a three-point  
27 reduction for acceptance of responsibility and combined with Defendant's criminal  
28 history score of IV, the applicable Guideline range was between 110 and 125 months.

1 The Court imposed a low-end sentence of 100 months and four years supervised  
2 release. (ECF No. 46).

### 3 **Fair Sentencing Act**

4 In 2010, Congress passed the Fair Sentencing Act, a portion of which reduced  
5 the disparity between criminal penalties for crack cocaine and powder cocaine  
6 offenses. The Act increased the amount of crack cocaine necessary to trigger the  
7 mandatory minimum sentences and, relevant here, decreased the offense levels for  
8 various quantities of crack cocaine. U.S.S.G. § 2D1.1(c) (2011). These Guideline  
9 amendments became retroactive November 1, 2011, when Congress failed to act with  
10 disapproval. U.S.S.G. § 1B1.10 (discussing retroactive application of Amendment  
11 750); *see also* 28 U.S.C. § 994(p). As a result, the Court has discretion to calculate a  
12 new Guideline range for Defendant, taking account of these amendments, and re-  
13 sentence him within the modified range. 18 U.S.C. § 3582(c)(2).

### 14 **Modified Sentence**

15 The base offense level under the modified Guidelines is 26, U.S.S.G.  
16 §2D1.1(c)(7) (at least 28 grams but less than 112 grams of cocaine base), which is  
17 reduced by three points because Defendant accepted responsibility. Fused with  
18 Defendant's level IV criminal history, this modified offense level results in a range  
19 of 70 to 87 months. The Court has considered the factors set forth in Section 3553(a),  
20 and, for the reasons articulated at the original sentencing hearing, it determines that  
21 a low-end Guideline range is still appropriate.

22 Accordingly, **IT IS HEREBY ORDERED:**

23 1. Defendant's Motion for Retroactive Application of Sentencing Guidelines  
24 (ECF No. 48) is **GRANTED**.

25 2. Defendant's original sentence of 100 months imprisonment is **VACATED**.  
26 He is committed to the custody of the Bureau of Prisons for a term of **70 months**. All  
27 other portions of the sentence, including the four-year term of supervised release,  
28 remain unchanged.

